

**Florida Memorial College, Employer-Petitioner and
United Faculty of Florida (Local 1880, AFT,
AFL-CIO, FEA/United). Case 12-UC-53**

September 20, 1982

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on December 2, 3, 4, 5, 8, and 9, 1980, before Hearing Officer Jack D. Livingston. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 12 transferred this case to the Board for decision. Thereafter, the Employer and the Union filed briefs.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer was stipulated by the parties to be engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The United Faculty of Florida (Local 1880, AFT, AFL-CIO, FEA/United) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Employer is a private, nonprofit educational institution located in Miami, Florida. The Union is the certified collective-bargaining representative of certain of the Employer-Petitioner's employees pursuant to a Certification of Representative which issued on March 16, 1979. The certified collective-bargaining unit is:

All full-time faculty members, professional librarians and professional counselors employed by Florida Memorial College, but excluding part-time faculty members, administrative staff employees, non-professional employees, guards and supervisors as defined in the Act.

The Employer seeks to clarify the unit to exclude all faculty members on the ground that they are managerial within the meaning of the Supreme Court's opinion in *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980). The Employer further asserts that the division chairpersons and those professional counselors who also serve as dormitory resident managers should be excluded as statutory supervisors. The Union contends that the College is not comparable to a mature university such as Yeshiva, and that all of the unit employees are entitled to

the protection of the Act. It therefore argues that the petition should be dismissed.

The Employer has a main campus located in Miami, Florida, and two smaller satellite facilities nearby. The Employer's program of instruction consists of a 4-year undergraduate liberal arts curriculum leading to either a bachelor of arts or bachelor of science degree. The College's governing body is the board of trustees, which is composed of 16 individuals. Two faculty members are designated as representatives to the board, but they have no voting powers. The board selects the College's president, who acts as its chief administrative officer. The president is assisted by a cabinet composed of the vice president, the dean of academic affairs, the dean of students and admissions, the director of development and planning, and the business manager. Appointments to these cabinet positions are controlled by the president, with the approval of the board. The president's cabinet meets with him weekly.

As the dean of academic affairs, Dr. Barbara Ricks has direct responsibility for the faculty. There are approximately 36 full-time faculty members, each of whom is assigned to one of the College's six academic divisions. The largest of these is the Division of General Studies which, *inter alia*, provides a core program for the students' first 2 years' curriculum. Ten to twelve faculty members are assigned to this division. Each of the remaining five divisions—Business Administration, Education, Humanities, Science and Mathematics, and Social Sciences—is assigned between three and seven faculty members. Each of the divisions has a division chairperson who is appointed by the president to oversee certain administrative functions in addition to teaching. The standard teaching load is ordinarily reduced somewhat for chairpersons to allow them time for these additional duties.

The College has an Academic Council. It is chaired by Dean Ricks who sits as a nonvoting member, and it includes 11 voting members: the 6 division chairpersons, the registrar, the head librarian, the associate dean for special academic programs, the director of institutional research, and the dean of students and admissions. During the school year, the Council generally meets once each month for approximately an hour and a half. Minutes of these meetings are distributed to the Council members, the president, and the vice president. Individual faculty members do not receive copies of the minutes unless they are named therein.

The Employer introduced into evidence the minutes of the last four Academic Council meetings held prior to the hearing herein. In the course of these meetings the administrators and chairpersons

in attendance discussed a variety of academic topics, including job descriptions for chairpersons, new courses and new majors, the academic calendar, the academic policies manual, forms to be used for hiring and for book orders, and a faculty/-student exchange program. A careful reading of the minutes of these meetings reveals, however, that the chairpersons were not responsible for the formulation or effectuation of management policies. For example, although job descriptions are mentioned in the minutes, Dean Ricks merely presented a written job description to the Council and asked whether any of the chairpersons challenged any item. When questions were raised, she stated that she would make the chairpersons' recommendations known to the president's cabinet. Similarly, the academic calendar was presented to the Council, rather than prepared by it, and Dean Ricks stated that she would bring the Council's ideas concerning the calendar before the cabinet. Dean Ricks also stated that she would present to the cabinet the Council members' thoughts concerning a new book-ordering procedure and a proposal to modify the form used to give notice of hiring to new instructors. A chairperson presented a proposal regarding a student/faculty exchange between the College and a university in Poland. After some discussion, Dean Ricks stated that, before she would submit the proposal to the president's cabinet, she wanted the mechanics of the program to receive further attention.

In other instances, Dean Ricks or other members of the administration use the Academic Council meetings simply as a vehicle to make announcements concerning actions which the administration had decided to take. Thus, Dean Ricks informed the Council of an upcoming faculty evaluation which "she planned to have done," and an administrator explained to the Council the provisions of the recently completed budget. During the course of this meeting one of the chairpersons pointed out that the chairpersons had not been consulted about the preparation of the budget line items.

The only formal means by which faculty other than chairpersons participate in academic governance is through membership on various advisory committees. These standing committees are created by the president, who has delegated authority to Vice President Cryer to appoint faculty members to them. The committees also include varying numbers of representatives from the administration and from the student body.¹ The committees are: ad-

missions, financial aid, athletics, teaching and learning, campus life, student grievance, library, development, public relations, campus beautification, benefits, mission and purpose, history and archives, and faculty and staff grievance. Not all of these committees had faculty appointed to them at the time of the hearing. Further, many of the committees to which faculty had been appointed met infrequently. The committees are empowered to make recommendations and reports, but do not have authority to make binding policy decisions. Dean Ricks testified that faculty recommendations are considered by the administration which may or may not adopt a recommendation depending upon its own evaluation of whether the recommendation is "sound."

President Robinson testified that the Academic Council, in consultation with the dean of academic affairs, decides what courses will be taught at the College. The Employer presented evidence concerning new courses which had been suggested by faculty members and were subsequently included in the College's curriculum. Thus, Professor Henderson suggested a course in English as a second language. The process of putting that course into operation, however, did not center on faculty approval or discussion. The idea was never presented to the faculty for a vote, was not presented to the Academic Council as far as Professor Henderson knew, and was put into effect only after Division Chairperson Blake sought the approval of Dean Ricks. The course was then offered for no academic credit. Similarly, when Dr. Blake sought to have a speech course added to the curriculum, she took the proposal directly to Dean Ricks. The Employer also adduced evidence to show that Professor Ross of the Humanities Division had conceived a new course, "Survey of Broadcasting," and successfully sought its inclusion in the division's curriculum. The record reveals, however, that Dr. Ross originally spoke with an individual who was affiliated with a local radio station and who suggested that a course in broadcasting could be taught by someone in the industry at no expense to the College. Dr. Ross then discussed the idea with President Robinson, and subsequently with Dean Ricks, who contacted the individual herself to pursue the matter.

Apart from these examples of newly developed courses, the great majority of courses offered simply follow the existing curriculum as set forth in the College catalog. There is no evidence that the catalog was prepared with any effective faculty input. The Employer introduced several documents, prepared in part by faculty members, describing programs in the Division of General Stud-

¹ Some committees, such as admissions, financial aid, and campus life, are composed of more administrators than faculty members.

ies such as language and reading laboratories and programs to improve freshman and sophomore studies. It appears from the testimony of Division Chairperson Blake, however, that several of the programs had been in existence since at least the 1979-80 academic year and that the documents in evidence did not precede the initiation of the programs, but rather were prepared between August and December of the following academic year, immediately before and subsequent to the Employer's filing of its petition.

Teaching methods and course content are determined for the most part by individual faculty members, although President Robinson testified that the selection of textbooks is made by the individual faculty member "in collaboration with" Dean Ricks. The evaluation of students is also carried out by individual faculty members, applying a grading system which was promulgated by Dean Ricks' office. None of the division chairpersons or administrative personnel has authority to change a grade assigned to a student by the faculty member who taught the course.

The College maintains an open admissions policy; hence there is no faculty involvement in the admissions process. Standards pertaining to the retention of students, including policies concerning student absence, probation, suspension, and expulsion, have been established by the administration in the College catalog, and are applied in individual cases by Dean Ricks in consultation with the chairperson of the division involved. Graduation requirements are also set forth in the catalog. Division chairpersons have the responsibility to compare the academic records of degree candidates with the requirements of the catalog in order to verify that the student has successfully completed the prescribed course of study in his or her field. Both Dean Ricks and the registrar must also approve each candidate for graduation. In the event that a student requests permission to substitute another course for one of the course requirements listed in the catalog, the chairperson will make a recommendation on the request, and Dean Ricks and the registrar must approve the substitution.

The normal teaching load for full-time faculty members is 12 to 15 hours per semester. No evidence was presented to show any degree of faculty control over teaching loads. President Robinson testified that Dean Ricks was responsible for the decision to reduce the chairpersons' loads from 15 to 9 hours to allow them time for their added duties. Dean Ricks, however, also has the authority unilaterally to vary the loads of individual chairpersons. Dean Ricks was responsible for setting Chairperson Blake's teaching load at 6 hours,

Chairperson Evans' load at 12 hours, and Chairperson Chaudhari's load at 15 hours, rather than the "standard" 9 hours.

If a particular section of a course is underenrolled, and the course is not one required for a major, Dean Ricks can direct that it be closed. Similarly, if the course is overenrolled, it is up to the dean either to add another section or to classify the course as an "overload" with the result that the professor receives additional compensation for teaching it. If the dean elects to add another section of the course, and another professor is required to teach it, the chairperson may recommend someone to the dean, who makes the final decision on hiring.

The record reflects that no uniform practice has been followed in hiring faculty members at the College. In some cases search committees comprised of faculty members and administrators have been formed to fill faculty vacancies. However, the decision to form a search committee is within the sole discretion of the president and his cabinet. Dr. Williams was hired as a professor in the Humanities Division without a search committee being formed. A Mrs. Rogers was also hired without a search committee being formed or other faculty input being sought because, according to Dean Ricks, an emergency existed following the dismissal of another instructor. Dean Ricks testified that a search committee comprised of members of the faculty and administration was formed to fill a vacancy in the Division of Science and Mathematics, and that the single applicant for the job was ultimately hired. Similar search committees were utilized, and their recommendations followed, in hiring Dr. Whitlock to teach religion, and in hiring a librarian.

In 1978, a search committee composed of faculty members and administrators was formed to recruit a new dean of academic affairs. President Robinson initially rejected the list of candidates proposed by the committee, and suggested an individual not included on the list. The search committee considered that applicant and returned to President Robinson with a new list which included that individual. President Robinson then appointed the individual he had suggested. In 1979, the post of dean of academic affairs was again vacant, and Dean Ricks was hired after a search committee composed of three faculty members and an unspecified number of administrators, students, and interested members of the community recommended her. President Robinson once again had sole authority in making the final selection.

There are no tenured faculty at the College, and with very few exceptions all contracts are for a

single year. A few 2-year contracts are offered at the discretion of the administration. The single-year contracts offered to faculty members for academic year 1980-81 contain a clause providing that:

[R]efusal to obey rules and regulations of the . . . College, as prescribed by the President of the . . . College, and further the employee's refusal to continue and improve scholarship, as prescribed by the President of the . . . College, shall be deemed sufficient to terminate this agreement herein for a just cause.

The decision to terminate or not to renew a faculty member's contract is within the discretion of President Robinson. Chairpersons make recommendations in this regard to Dean Ricks, but she need not defer to such recommendations and has rejected some of them. President Robinson described the decision not to rehire one faculty member as "an administrative matter," since it was arrived at in the interest of saving money. Further, there was documentary and testimonial evidence that, in 1978, President Robinson unilaterally determined not to renew the contracts of four faculty members without giving advance notice to the faculty, the chairperson of the Division of Science and Mathematics in which the four had worked, or the academic dean. The minutes of the Academic Council meeting at which this matter was discussed were introduced into evidence, and reflect that President Robinson stated during the course of the discussion that the dismissals were necessary as money-saving measures and that "his office gives him the right to make a decision about spending without input from the academic area." President Robinson further stated at that meeting that, while no further terminations were then foreseen, that did not "prohibit more administrative decisions in violation of the Faculty Handbook."

The budget is drawn up and administered by the members of the president's cabinet, and the business manager in particular. The division chairpersons received budget figures from the business manager and from Dean Ricks, but have no significant role in preparing them. Chairperson Evans testified that he had received a memorandum from Dean Ricks acknowledging that, "Due to time constraints on [the dean] you have not been involved in the 1980-81 budget process." Although the memo, which was introduced into evidence, also indicated that he would be consulted in the future regarding supplies and travel expenses, Dr. Evans testified that he was not subsequently consulted regarding these or any other budget matters. The Union also introduced a memo from the business manager of the College informing the faculty and staff that a number of changes in the College's

business practices were to be implemented immediately. These included elimination of faculty travel advances, revision of the travel reimbursement policy, and new rules regarding departmental purchasing practices which required business office approval for all transactions. These changes were not discussed with the faculty prior to being implemented.

The College's main campus is located in Miami but, as noted above, it also has two satellite facilities located nearby. The decision to open these satellite facilities was made, according to President Robinson, by Dean Ricks in consultation with the associate dean of academic programs, the business manager, and Vice President Cryer.

Individual faculty members are subject to evaluation by their students, by the division chairperson, and by the dean of academic affairs. Evaluation forms designed by a faculty member have been approved by the Academic Council for use in evaluating instructors as well as for faculty evaluations of the division chairpersons. Not all chairpersons have participated in evaluating their division faculty. Education Division Chairperson Evans testified that he has never been given or used faculty evaluation forms, and has never evaluated the faculty in his division.

The record shows that one sabbatical has been granted to a faculty member in recent years. The procedure for approving the sabbatical involved no faculty members, but instead required the favorable recommendation of Dean Ricks to President Robinson, and his favorable recommendation to the board of trustees, which approved the request.

If a faculty member has a grievance regarding salary or promotion, that grievance is discussed initially with the chairperson, and any adjustments are handled by the dean of academic affairs, the president, and the board of trustees in turn.

As previously mentioned, the division chairpersons are selected by the president. Thus, Chairpersons Evans, Blake, and Chaudhari testified that they were simply designated as chairperson by President Robinson without a search committee being formed, interviews being conducted, or discussions among the division faculty being held. The chairpersons conduct division faculty meetings, which typically are held about once a month. A variety of matters may be discussed at these meetings including, *inter alia*, scheduling, textbook orders, and student counseling.

In at least one instance, a chairperson recommended to Dean Ricks that a faculty member be promoted, and the dean, on the basis of her own evaluation of the candidate, favorably forwarded the recommendation to President Robinson, who

approved it. Promotions are within the province of the administration, however. Thus, when an instructor in Dr. Chaudhari's division sought a promotion from assistant to associate professor, Dean Ricks denied the request. The chairpersons appear to have a role in granting faculty raises. Dean Ricks testified that, subject to the limitation that raises may not exceed 7 percent, the chairpersons allot raises within their divisions at their own discretion. Division Chairperson Blake, however, testified that, while she had been asked by the administration to make recommendations as to raises, she never learned whether her recommendations had been followed.

The chairpersons appear to have a special role in the hiring process pertaining to part-time faculty. Typically, a part-time faculty member hired to teach a particular course will be rehired to teach that course whenever it is offered. The chairperson contacts such individuals, offers the position, and, if the individual accepts the offer, recommends to Dean Ricks that a contract be approved. The record shows that the salary of part-time instructors is determined under a standard formula established by the administration, which provides that part-time faculty receive \$800 for classes of seven or more students, and \$100 per student for classes smaller than seven students.

Dean Ricks testified that either the vice president or the business manager would make the decision to permit a particular division to have its own secretary. At least one division chairperson, however, was involved in the hiring of a clerical employee. Dr. Evans informed the vice president's office that his division needed a secretary. That office screened a number of candidates to be interviewed by Dr. Evans. The individual selected by Dr. Evans was hired for the job. Dean Ricks also testified that one clerical employee had been discharged by a division chairperson, and that the discharge was effective without her approval.

As noted above, the Employer contends that two professional counselors who serve as resident dormitory managers are supervisors. In support of this contention, the Employer adduced evidence that the resident managers direct the work of the dormitory janitors and can recommend to the dean of students that a janitor be hired or fired. However, there was no showing that either of the resident managers had ever made such a recommendation, and the dean of students testified that, in the event he received one, he "would not just accept the recommendation" without first getting the answers to several questions about the individual in question.

In *N.L.R.B. v. Yeshiva University*, *supra*, the Supreme Court concluded that that employer's full-

time faculty members were managerial employees who were therefore not covered under the Act. In reaching this conclusion, the Court relied on its findings that the faculty exercised absolute authority in academic matters, determining each school's curriculum, grading system, admission and matriculation standards, academic calendars and course schedules. It additionally found that faculty authority extended beyond strictly academic concerns. Thus, it noted that the faculty effectively determined faculty hiring, tenure, sabbaticals, terminations, and promotions. Further, it found that the faculties of some schools within the university made final decisions regarding the admission, expulsion, and graduation of individual students, and decided matters involving teaching loads, student absence policies, tuition and enrollment levels, and in one case the location of a school.

The facts in the instant case demonstrate that in some significant areas this faculty possesses no authority, and in others it possesses only a limited degree of influence. In no area does it exercise the absolute authority of the *Yeshiva* faculty. Thus, in summary, we note that the various standing committees here generally have been granted little authority, do not meet regularly, are not comprised solely of faculty members, and are not fully staffed. Further, unlike *Yeshiva*, the curriculum is not within the faculty's absolute control, since all decisions involving course offerings must be approved by the Academic Council, almost one-half of whose voting members are administrators, and other curricular proposals must be approved by the dean of academic affairs or the board of trustees. While the faculty members generally determine the content of their own courses, even this basic academic function is carried out in collaboration with the dean of academic affairs insofar as the selection of textbooks is concerned. The faculty has no effective control over admissions policy or matters relating to the retention, suspension, probation, or expulsion of students or to graduation requirements. Additionally, teaching loads are assigned by the dean of academic affairs, who also determines whether a section of a course is under or over-enrolled.

The faculty is also without any substantial authority with respect to such matters as hiring, tenure, promotions, grievances, or sabbaticals. In this regard, hiring of full-time faculty has occasionally been accomplished with the aid of search committees made up in part of faculty members, but some of their recommendations have been rejected by President Robinson. In other cases, no search committees were formed, and hiring was done by administration officials acting without faculty par-

ticipation. There is no tenure at the College. Furthermore, faculty contracts make it a condition of employment that faculty members obey the rules and regulations prescribed by the College's president. The president has unilaterally determined that the contracts of at least five faculty members would not be renewed, and he did so in apparent disregard of the procedures set forth in the faculty handbook regarding such decisions. Raises and promotions are granted by the administration, sometimes with the recommendation of division chairpersons as to whether faculty members should receive a larger or smaller raise within a range established by the administration. Chairpersons' recommendations, however, were shown not to be controlling in the event the board of trustees concludes that a different salary figure would be appropriate. Faculty grievances are resolved through the administrative chain of command of the dean of academic affairs, the president, and the board of trustees. The Faculty Grievance Committee was not shown to have any effective control over the disposition of such grievances. The single sabbatical granted in recent years required the approval of the administration, including the board of trustees.

Additionally, the budget itself is drawn up and managed by administration officials without significant input from faculty members. The record makes it plain that administration officials, and particularly the College's business manager, are free unilaterally to promulgate a wide range of rules and policies affecting the budget which faculty members are obligated to follow. Finally, we note that administrative personnel made the decisions to open and where to locate the College's satellite facilities.

It is clear from the foregoing and the record as a whole that here, in contrast to the situation in *Yeshiva*, the faculty's authority in strictly academic matters is far from absolute, and that the faculty exercises no substantial control in spheres beyond the strictly academic. Although the Employer's witnesses, and Dean Ricks in particular, repeatedly testified that the administration arrived at its decisions after "consultation" with faculty members, this level of proof manifestly fails to establish that the faculty effectively exercises managerial authority. Mere consultation with the faculty, even if this vague terminology is given the strongest reading possible in light of the record as a whole, does not give the faculty effective control in formulating management policies.

Turning to the six division chairpersons, although they are members of the Academic Council, this is insufficient to establish their managerial status. While the Employer argues that the Aca-

demical Council has "addressed" a number of issues involving academic policy, there is no showing that in doing so the Academic Council generally makes operative decisions. To the contrary, it appears that the issues discussed at the Academic Council meetings are frequently announcements made to the chairpersons by Dean Ricks or other administrators, and that substantive decisions are deferred for consideration by the president's cabinet, a body which does not include faculty members. Further, the chairpersons' occasional recommendations regarding the size of salary increases to be granted faculty members are made within established limits which are narrowly circumscribed by the administration.

Accordingly, we find that the full-time faculty, including the chairpersons, are not managerial employees.²

We further find without merit the Employer's contention that the chairpersons and the two professional counselors who serve as resident managers should be excluded from the unit on the grounds that they are supervisors. The chairpersons exercise certain authority over nonunit employees which is arguably supervisory in character. Thus, they have a role in the hiring and retention of both clerical employees and part-time faculty members. It is clear, however, that the chairpersons devote only a small fraction of their time to such responsibilities. Since neither part-time faculty nor clerical personnel are included in the unit, these functions of the chairpersons do not preclude their inclusion in the unit. *Adelphi University*, 195 NLRB 639, 643-645 (1972). Similarly, whatever supervisory authority may occasionally be exercised by the two professional counselors who serve as dormitory resident managers relates solely to the dormitory janitors, who are not unit employees. We accordingly decline to exclude the resident managers from the unit. *Adelphi University, supra*.

Finally, we find that our dissenting colleagues' conclusion that the faculty as a whole is managerial rests on bases which are tenuous at best. Following the Supreme Court's guidance in *Yeshiva*, we can attach no great weight to the fact that the faculty determines such matters as the content of their courses, their teaching methods, and the evaluations of their students.³ Further, in none of the other areas relied on by the dissent was the faculty shown to exercise effective managerial authority.

² In its brief, the Employer does not appear to contend that the professional librarians and professional counselors should be excluded from the unit on the grounds that they are managerial employees. In any event, there is no evidence that the employees in those classifications have managerial authority.

³ *N.L.R.B. v. Yeshiva University, supra* at fn. 31

Rather, the faculty is constrained to participate in what is, in effect, a sophisticated version of the familiar suggestion box. Thus, proposals made by the faculty are systematically and independently reviewed by the administration (often without any continuing participation by faculty members), which has consistently substituted its own judgment for that of the faculty.

Each of the factors relied on by the dissent vanishes under close scrutiny. Thus, the introduction of new courses and majors to which the dissent refers is the product of administration decisionmaking. The various language labs and tutoring programs relied on by the dissent are noncredit programs, many of which were not even shown to have been initiated by the faculty, although they were described by faculty members in documents prepared after the fact. Divisional meetings were shown to have "addressed" various matters, but not to have formulated effective recommendations regarding them. Hiring is not dependent upon faculty recommendations; as often as not, either there was no search committee formed at all, or the recommendation of the search committee was "adopted" without being meaningfully effective, such as when only a single candidate applied for a position, or when President Robinson rejected a list of candidates and directed the committee to consider another individual, whom he ultimately appointed. The dissent's reliance on the existence of standing committees ignores the fact that not even those committees which were staffed and which held meetings were shown to have effectively recommended anything. Although, as the dissent notes, the three-member Mission and Purpose Committee was directed by the administration to draft a long-range planning document, the report ultimately adopted by the board of trustees was written instead by a "Long Range Planning Committee" composed of 11 individuals, of whom at most 4 were faculty members, with the assistance of nonfaculty consultants. There was no showing that, in its final form, the document reflected any of the views of the Mission and Purpose Committee.

In sum, the faculty is often invited to make suggestions, but such suggestions are shown no systematic deference, and thus do not rise to the level of effective recommendations.

Having concluded that neither the chairpersons nor the other full-time faculty members are managerial employees, and that neither the chairpersons nor the resident managers exercise supervisory authority which requires their exclusion from the unit, we shall dismiss the Employer's petition for unit clarification.

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

CHAIRMAN VAN DE WATER and MEMBER HUNTER, dissenting:

Unlike our colleagues in the majority, we are persuaded that the College's faculty members are managerial employees. Initially, we note that the faculty members determine such matters as teaching methods, course content, student evaluations, course scheduling, and the assignment of instructors to teach specific courses. Obviously these are essential functions of the institution and we find it especially significant that they are within the unquestioned province of the faculty. The faculty's role in operating the College is far broader than this, however. For example, faculty initiatives have led to the development of new courses in broadcasting and English, as well as new divisional majors in community psychology, economics, and transportation. Certain of the division faculties have exercised their independent authority, without need for approval from other sectors of the College or the administration, to institute language and reading laboratories, a peer tutoring program, in-service workshops, and at least three distinct programs for the improvement of freshman and sophomore academics and student counseling. The faculties participate in monthly divisional meetings which have addressed such areas as the academic calendar, course scheduling, and faculty evaluations. Indeed, the faculty evaluation forms ultimately adopted by the College were designed and prepared by a faculty member. The divisional meetings serve the additional purpose of enabling division chairpersons to learn the views of the faculty on issues which will be before the Academic Council, so that the chairpersons may more effectively serve as faculty spokespersons in that representative body. Faculty members have also participated on search committees whose recommendations led to the hiring of faculty members, a head librarian, two academic deans, and the current president of the College.

The faculty also participate on the College's many standing committees, and faculty members serve as chairpersons for 13 of the 14 committees, including the admissions, financial aid, faculty and staff grievance, library, development, mission and purpose, history and archives, benefits, and long range planning committees. The functions of these committees are virtually paradigms of managerial authority. For example, during the 1979-80 academic year the mission and purpose committee (which was composed entirely of faculty members)

was charged with the responsibility to draft a long-range planning document setting forth an analysis of the College's goals and plans for the future. The final report, which was written in substantial part by faculty members, calls for specific and major changes involving enrollment, curriculum, and the College's physical plant. It was adopted by the board of trustees, and is currently being implemented.

Our colleagues dismiss this extensive faculty involvement in the management of the College on the ground that "mere consultation" does not rise to the level of managerial authority under the Supreme Court's *Yeshiva* opinion.⁴ We cannot agree that this record of pervasive faculty participation in

almost every aspect of the College's life constitutes mere consultation. Instead, it is clear to us that the faculty here exercises effective discretion in a wide range of areas. The fact that the administration retains *ultimate* authority fails to remove this case from the *Yeshiva* rationale. As the Court there noted, the relevant consideration is effective *recommendation* or control rather than final authority.⁵ Because we would find that the faculty here meets that test, we must respectfully dissent.

⁴ *Id.* at 683, fn. 17. In this regard we note that the Court found in *Yeshiva* that universitywide policies were formulated by the central administration with the approval of the board of trustees. The faculty's only participation in universitywide governance was through its representatives on an elected student-faculty advisory council and the faculty review committee, which adjusted grievances by informal negotiations and also made purely advisory recommendations to the dean of the affected school or to the president.

⁴ *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980).